

Department of State

§ 123.6

(c) *Requirements.* To use an exemption under § 123.4 (a) or (b), the following criteria must be met:

(1) The importer must meet the eligibility requirements set forth in § 120.1(b) of this subchapter;

(2) At the time of export, the ultimate consignee named on the Shipper's Export Declaration (SED) must be the same as the foreign consignee or end-user of record named at the time of import; and

(3) As stated in § 126.1 of this subchapter, the temporary import must not be from or on behalf of a proscribed country listed in that section unless an exception has been granted in accordance with § 126.3 of this subchapter.

(d) *Procedures.* To the satisfaction of the District Director of Customs, the importer and exporter must comply with the following procedures:

(1) At the time of temporary import—

(i) File and annotate the applicable U.S. Customs document (e.g., Form CF 3461, 7512, 7501, 7523 or 3311) to read: "This shipment is being imported in accordance with and under the authority of 22 CFR 123.4(a) (identify subsection)," and

(ii) Include, on the invoice or other appropriate documentation, a complete list and description of the defense article(s) being imported, including quantity and U.S. dollar value; and

(2) At the time of export, file with the District Director of Customs at the port of exit a Shipper's Export Declaration (Department of Commerce Form 7525-V) and include on the SED or as an attachment the following information:

(i) the U.S. Customs entry document number or a copy of the U.S. Customs documentation under which the article was imported;

(ii) the following statement: "22 CFR (identify section) and 22 CFR 120.1(b) applicable."

[58 FR 39299, July 22, 1993, as amended at 64 FR 17533, Apr. 12, 1999]

§ 123.5 Temporary export licenses.

(a) The Office of Defense Trade Controls may issue a license for the temporary export of unclassified defense articles (DSP-73). Such licenses are valid only if (1) the article will be exported for a period of less than 4 years

and will be returned to the United States and (2) transfer of title will not occur during the period of temporary export. Accordingly, articles exported pursuant to a temporary export license may not be sold or otherwise permanently transferred to a foreign person while they are overseas under a temporary export license. A renewal of the license or other written approval must be obtained from the Office of Defense Trade Controls if the article is to remain outside the United States beyond the period for which the license is valid.

(b) *Requirements.* Defense articles authorized for temporary export under this section may be shipped only from a port in the United States where a District Director of Customs is available, or from a U.S. Post Office (see 39 CFR part 20), as appropriate. The license for temporary export must be presented to the District Director of Customs who, upon verification, will endorse the exit column on the reverse side of the license. In some instances of the temporary export of technical data (e.g. postal shipments), self-endorsement will be necessary (see § 123.22(d)). The endorsed license for temporary export is to be retained by the licensee. In the case of a military aircraft or vessel exported under its own power, the endorsed license must be carried on board such vessel or aircraft as evidence that it has been duly authorized by the Department of State to leave the United States temporarily.

(c) Upon the return to the United States of defense articles covered by a license for temporary export, the license will be endorsed in the entry column by the District Director of Customs. This procedure shall be followed for all exits and entries made during the period for which the license is valid. The licensee must send the license to the Office of Defense Trade Controls immediately upon expiration or after the final return of the defense articles approved for export, whichever occurs first.

§ 123.6 Foreign trade zones and U.S. Customs bonded warehouses.

Foreign trade zones and U.S. Customs bonded warehouses are considered integral parts of the United States for

the purpose of this subchapter. An export license is therefore not required for shipment between the United States and a foreign trade zone or a Customs bonded warehouse. In the case of classified defense articles, the provisions of the Department of Defense Industrial Security Manual will apply. An export license is required for all shipments of articles on the U.S. Munitions List from foreign trade zones and U.S. Customs bonded warehouses to foreign countries, regardless of how the articles reached the zone or warehouse.

§ 123.7 Exports to warehouses or distribution points outside the United States.

Unless the exemption under § 123.16(b)(1) is used, a license is required to export defense articles to a warehouse or distribution point outside the United States for subsequent resale and will normally be granted only if an agreement has been approved pursuant to § 124.14 of this subchapter.

§ 123.8 Special controls on vessels, aircraft and satellites covered by the U.S. Munitions List.

(a) Transferring registration or control to a foreign person of any aircraft, vessel, or satellite on the U.S. Munitions List is an export for purposes of this subchapter and requires a license or written approval from the Office of Defense Trade Controls. This requirement applies whether the aircraft, vessel, or satellite is physically located in the United States or abroad.

(b) The registration in a foreign country of any aircraft, vessel or satellite covered by the U.S. Munitions List which is not registered in the United States but which is located in the United States constitutes an export. A license or written approval from the Office of Defense Trade Controls is therefore required. Such transactions may also require the prior approval of the Maritime Administration, the Federal Aviation Administration or other agencies of the U.S. Government.

§ 123.9 Country of ultimate destination and approval of reexports or retransfers.

(a) The country designated as the country of ultimate destination on an

application for an export license, or on a Shipper's Export Declaration where an exemption is claimed under this subchapter, must be the country of ultimate end-use. The written approval of the Office of Defense Trade Controls must be obtained before reselling, transferring, transshipping, or disposing of a defense article to any end user, end use or destination other than as stated on the export license, or on the Shipper's Export Declaration in cases where an exemption is claimed under this subchapter. Exporters must ascertain the specific end-user and end-use prior to submitting an application to the Office of Defense Trade Controls or claiming an exemption under this subchapter.

(b) The exporter shall incorporate the following statement as an integral part of the bill of lading, and the invoice whenever defense articles on the U.S. Munitions List are to be exported:

These commodities are authorized by the U.S. Government for export only to [country of ultimate destination] for use by [end-user]. They may not be transferred, transshipped on a non-continuous voyage, or otherwise be disposed of in any other country, either in their original form or after being incorporated into other end-items, without the prior written approval of the U.S. Department of State."

(c) A U.S. person or a foreign person requesting approval for the reexport or retransfer, or change in end-use, of a defense article shall submit a written request which shall be subject to all the documentation required for a permanent export license (see § 123.1) and shall contain the following:

(1) The license number under which the defense article was previously authorized for export from the United States;

(2) A precise description, quantity and value of the defense article;

(3) A description of the new end-use; and

(4) Identification of the new end-user.

(d) The written approval of the Office of Defense Trade Controls must be obtained before reselling, transferring, transshipping on a non-continuous voyage, or disposing of a defense article in any country other than the country of